IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2968 of 1993

For Approval and Signature:

Hon'ble HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANDUBEN MALJIBHAI

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 2968 of 1993

MR JD AJMERA for Petitioner No. 1

MR N.D.GOHIL, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 26/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. J.D.Ajmera for the petitioner and learned AGP Mr. N.D.Gohil appearing on behalf of the respondent.

2. In the present petition, the petitioner has challenged the award passed by the Labour Court, Bhavnagar in Reference No. 561/1988 dated 27.11.1991 wherein the reference has been rejected by the Labour Court. This Court has issued rule, expedited, by order dated 16.4.1993.

3. Learned advocate Mr. Ajmera appearing on behalf of the petitioner has submitted that no written notice has been given or no explanation has been called for before terminating the service of the petitioner. He also submitted that looking to the work which was performed by the petitioner, it was a work of perennial nature and therefore, Labour Court has committed gross error in rejecting the reference of the petitioner. He also submitted that there was no cross-examination by the respondent of the deposition made by the petitioner before the Labour Court, meaning thereby, according to his submission, the deposition of the petitioner remained uncontroverted and therefore, Labour Court ought to have accepted the deposition of the petitioner. He also submitted that Labour Court has committed error in coming to the conclusion that the petitioner ought to have produced some other materials but because of the fact that the workman is a poor and illiterate person, not able to produce necessary documents because those documents are not within the control of the workman. He also submitted that respondent has also not produced any document to show that the petitioner had not worked for the period mentioned by the petitioner. In short, his submission is that once the respondent is remained inactive and not cross-examined the workman and no material has been placed on record for rebutting the evidence of the petitioner that Labour Court ought to have accepted the evidence of the workman and granted

relief of backwages which has not been granted, therefore, Labour Court has committed gross error which require interference by this Court while exercising the powers under Articles 227 of the Constitution of India.

4. Learned AGP Mr. N.D.Gohil appearing on behalf of the respondent has submitted that before the Labour Court, the petitioner workman has not produced any material to justify his deposition and therefore, Labour Court has rightly appreciated the oral as well as documentary evidence and come to the conclusion that the workman has not able to produce any sufficient evidence that he had completed 240 days continuous service and it is burden upon the employee to prove 240 days continuous working with the respondents. He also submitted that

Labour Court has also rightly appreciated that the workman has raised industrial dispute after a period of 9 years from the date of termination and therefore, no details have been given by the workman that on which date her services was terminated and how many days she has worked, for that also no document has been produced by the petitioner and therefore, Labour Court has rightly not relied upon the deposition of the petitioner and rejected the reference. For that Labour Court has not committed any error while rejecting the reference and for that no interference is necessary by this Court while exercising powers under Article 227 of the Constitution of India.

5. I have considered the submissions made by both the learned advocates and I have also perused the award passed by the Labour Court and other documents which are annexed to the petition. The question before the labour Court was that, according to the petitioner, she was working since 2.3.1978, but her service has been terminated by the respondents without giving any opportunity to the petitioner. The reference has been made by the State Government in the year 1988. The statement of claim was filed by the petitioner before the Labour Court. The written statement was also filed by the respondent vide exhibit-3. It is true that on behalf of respondent no one remained present when the workman was examined on 27.9.1991 before the Labour Court. The Labour Court has considered the oral evidence of the petitioner and that oral evidence has been appreciated by the Labour Court and come to the conclusion that workman was not able to produce any material to satisfy and justify that she had worked for 240 days continuous service within a period of one year. The petitioner was not able to even give the date of termination and, only on presumption the statement was made in the deposition. The Labour Court has also considered the second file of the Conciliation Officer wherein the earlier case of the petitioner was closed by the Conciliation Officer and thereafter it was reopened on the basis of the application given by one representative Karsanbhai to Conciliation Officer on 14.10.1988. The Labour Court has also appreciated the fact of written statement submitted by the respondent that petitioner was engaged casually prior to 9 years and as the work was completed, there was no necessity to continue the petitioner and, therefore, her service was terminated. Thereafter, workman remained without any proceedings and no effective steps have been taken by the workman but demand notice was served to the respondents dated 10.5.1988. The Labour Court has considered that from the date of termination, more than 9

years, workman remained inactive and no dispute has been raised and even workman was not aware about his date of termination and workman has also not made any efforts before the Labour Court by giving application and requested the Labour Court to call the necessary records from the respondents. No such efforts have been made and no material has been produced by the workman and, therefore, according to the Labour Court, merely relying upon the oral evidence which is not believable according to the Labour Court in absence of any material and, therefore, Labour Court has come to the conclusion that merely oral evidence of the workman is not sufficient but it must have to be supported by documentary evidence and, therefore, Labour Court has rejected the said reference.

6. I have considered the observations made by the Labour Court and also the fact that on behalf of the petitioner except oral evidence no other material was placed on record to justify that workman had completed 240 days continuous service with the respondents. It is a duty of the employee or the workman to satisfy the Labour Court that workman had completed 240 days continuous service with the respondents within a period of preceding 12 months. Once the workman is not able to justify and prove the facts before the Labour Court, in that circumstances, there is no liability of the respondents to prove otherwise. Therefore, considering this fact and when the dispute has been raised after a period of 9 years and, in between no explanation has been given by the petitioner before the Labour Court, that apart, the dispute is not raised within reasonable time, therefore, considering the overall facts and circumstances of the case, the view taken by the Labour Court is reasonable, just and proper and therefore, according to my opinion, Labour Court has not committed any error which require any interference by this Court while exercising powers under Article 227 of the Constitution of India. Hence there is no substance in the present petition, present petition is dismissed with no order as to costs. Rule is discharged.

(H.K.Rathod,J)

Jayanti*